

the appeal in the list of Appeals and accordingly the matter was mentioned to the Court of Appeal (Murison, C.J., Burton, J., and Whitley, J.)

*Spenser-Wilkinson* for Appellant.

This appeal should not have appeared in the list. A proper notice of withdrawal duly consented to by the solicitors for the Respondent had been lodged with the Registrar. *Watson v. Cave*, (No. 2) (1881) 17 C.D. 23 is an authority for the submission that an appeal is at an end as soon as the appellant has given notice of withdrawal and the other parties to the appeal have consented to such withdrawal. He referred also to Section 1131(1) of the Civil Procedure Code and Van Someren's notes thereto.

*Koek* for the Respondent.

While not opposing the appellant's contention suggested that the Court might wish to retain some control over the withdrawal of appeals once they had been instituted and pointed out that an ordinary suit could not be discontinued without leave of the Court, after a certain stage had been reached.

Murison, C. J. delivered the Judgment of the Court.

**MURISON, C.J.**—In this case the Appellant entered an appeal and afterwards notified the Respondent that he wished to withdraw the appeal. The Respondent agreed to the withdrawal and signed a consent paper to that effect. This withdrawal was notified to the proper officer of the Court namely the Registrar. The matter should have ended there but the Registrar doubted whether this procedure was correct or whether the appeal could be withdrawn in this way and he put the case in the list for the Court of Appeal.

In our opinion the procedure adopted by the Registrar was not correct.

Once the proper officer had been notified that the appeal was withdrawn by consent of the parties and the consent paper filed the appeal was at an end. It is not now properly before us and therefore we cannot deal with it at all.

We understand that the parties have agreed between themselves on the question of costs and therefore no question arises on this subject.

Solicitors for Appellant (Defendant)—

*Donaldson & Burkinshaw.*

Solicitors for Respondent (Plaintiff)—

*Chan & Eber.*

[ORIGINAL CIVIL JURISDICTION.]

**THE NESTLE & ANGLO-SWISS CONDENSED MILK CO.** . . . . . Plaintiffs

Versus

**THE EAST ASIATIC CO., LTD.** . . Defendants

[SINGAPORE SUIT No. 8 OF 1932]

*Trade Mark—Passing off—name acquired in market—similarity of get-up—actual confusion.*

No trader can adopt a trade-mark so resembling that of a rival as that ordinary purchasers, purchasing with ordinary care, are likely to be misled.

If the goods of a manufacturer have, from the mark or device he has used, become known in that market by a particular name, the adoption by rival trader of any mark which will cause his goods to bear the same name in the market, is as much a violation of the rights of that rival as the actual copy of the device.

The plaintiff Company, manufacturers and sellers of sweetened condensed milk, in 1925 introduced into the Singapore market a brand called the "ROSE BRAND" which was specially designed for the coffeshop trade. Upon each tin was a label bearing the design of a red rose with a red bud on each side of it, the words "Rose brand" appearing in blue under the rose. This brand which acquired great popularity had come to be generally known in the market by the name of Flower brand or its equivalents in the Malay and Chinese languages. In 1931 the defendants advertised a new brand called "Lotus Brand." To each tin of this milk as first imported into the Colony was affixed a label on which appeared the design of a single large red or pink flower—a lotus—with a bud of similar colour on each side of the flower. The size and relative positions of these buds were similar to those of the buds on the Rose Brand tins and there was a blue band round the top and bottom of both labels and the wordings were printed in blue. Conscious of the danger of confusion, the plaintiffs made repeated protests, after which the defendants modified the design of their mark and produced a new label, the differences between this and the previous one being that a yellow band was substituted for the blue band around the top and bottom and the buds on each side of the main flower were deleted. In an action brought by the plaintiffs against the defendants for an injunction to restrain the use of the defendants' trade mark.

*Held*, (on the evidence) that the plaintiff's milk had become widely known in the market by the name "Chop Bunga"; that the get-up of the two brands of milk was similar; and that they had been definite instances of actual confusion. The plaintiffs, under the circumstances, were entitled to an injunction.

*Reddaway v. Banham*, (1896) A.C. 199; *Orr Ewing & Co. v. Johnston & Co.* (1880) L.R. 7 A.C. 219 and *Seizo v. Provizende*, L.R. 1 Ch. App. 192, applied.

ACTION tried before Whitley, J. on the 24th, 25th, 29th, 30th and 31st August, 1932.

The material facts and arguments are set out in the Judgment below.

*Spenser-Wilkinson*, for the plaintiffs.

*Page*, (*Walters* with him) for the defendants.

*Cur. Ad. Vult.*

4—10—1932,

**WHITLEY, J.**—The Plaintiffs are a Company incorporated in Switzerland with offices in Singapore and Kuala Lumpur and all over the world. They are manufacturers and sellers of condensed milk both sweetened and unsweetened. It is common ground that in the trade there is a defined distinction between "sweetened condensed milk," "unsweetened or evaporated milk," "Sterilised natural milk" and "Powdered milk." Each has its own particular trade and market and class of consumers. The present case is concerned with "Sweetened condensed milk" and the bulk of the trade in the cheaper brands of this milk is with coffee shops and the more illiterate classes who frequent them. When the customer is served with a cup of coffee the milk is already mixed with the coffee so that the customer would generally not see the tin out of which the milk is taken. There are a large number of coffee shops in Singapore—one witness put the figure at over 2,000.

In 1925 the Plaintiffs put on the Singapore market a new brand which they called "Rose Brand" and which was specially designed for the coffee shop trade. Upon each tin is a label bearing the design of a red rose with a red bud on each side of it. The words "Rose Brand" appear in blue under the rose. This brand acquired great popularity as a coffee shop milk and in 1930 the sales to coffee shops amounted to 3,000 to 4,000 cases per month. It had come to be generally known in the market by the names "Chop Bunga" or "Whay Piau" these being respectively the Malay and Chinese words for Flower Brand. There was abundant evidence to establish this fact and it is exactly what one would expect to happen in Singapore. As Mr. Wilson pointed out it does not follow that the public will adopt the name given to a particular brand by the makers. The public frequently fasten upon some feature on the label which appeals to them and attracts their attention—something which they can understand. For example the Plaintiffs' well known "Milkmaid" brand is known here as "Red Character" brand because there are conspicuous red Chinese characters on the label. The native consumer here has never seen a milkmaid so the picture of one conveys nothing to him and he will not use that name. Similarly the rose is to most natives an unknown flower. It is only grown in a few private gardens and there does not appear to be any Malay word for it. The average coffee shop keeper looking at the picture on the label would not know that it was a rose but it would be obvious to him that it was a flower and he would naturally refer to it as Chop Bunga (Flower Brand).

In 1931 Defendants advertised a new brand called Lotus brand which is the subject matter

of this action. It was a sweetened milk calculated to appeal to the same class of customers as the Plaintiffs' Chop Bunga or Flower Brand. Plaintiffs' manager Mr. Wilson wrote to the Defendants pointing out the danger of confusion and the matter was referred to the head offices in Europe. Mr. Wilson obtained a tin of this milk from Kuala Lumpur. This tin Exhibit C which was produced in evidence bears certain points of resemblance to the Plaintiffs' Rose Brand tins. There is a single large red or pink flower—a lotus—with a bud of similar colour on each side of the flower. The size and relative positions of these buds are similar to though not identical with those of the buds on the Rose Brand tins. There is a blue band round the top and bottom of both labels and the wording is printed in blue. There are also points of dissimilarity. The shape and shades of colour of the flower are different and green leaves and perpendicular lines on the Rose Brand label are not repeated on the Lotus label. Further the lotus has a yellow centre. The words "Lotus Brand" under the flower are in white on a blue back ground whereas the words "Rose Brand" under the flower are in blue on a white back-ground. I do not think it is material to compare the words on the two labels as it is common ground that the bulk of the consumers would be illiterate and unable to read English.

As a result of the Plaintiffs' protest the Defendants produced a new label (Exhibit D). The only difference between this and the first one (Exhibit C) was that the words "Chop Bunga Tratay" being the Malay for Lotus Brand were added over the flower and the Chinese characters for "Lotus" were added on each side of the buds—not very conspicuously. Tins bearing this label were on sale in Singapore in early December 1931. The Plaintiffs again protested without result and on 22nd December placed the matter in the hands of their solicitors. On 24th December the Defendants wrote (not through their solicitors) intimating that in future shipments their label would be altered by omitting the buds and substituting yellow lines for the blue lines round the top and bottom. The Plaintiffs through their solicitors replied that this would not satisfy them and the writ was issued on 5th January 1932. The Defendants sent to the Plaintiffs a sample of the new label (Exhibit E) and at the beginning of April 1932 the Plaintiffs found milk with this label on sale in Singapore. Tins bearing label D were still on sale in Singapore at that time.

The Plaintiffs' case is that their Rose Brand milk had between 1925 and 1930 become well known to Asiatic purchasers in Singapore by the name Chop Bunga or the equivalent of the term

"Flower Brand" in the language of the purchaser; that no other sweetened condensed milk was known by that name; that they had acquired the exclusive right to the use of that name and that the Defendants have infringed this right by putting their sweetened condensed milk on the market with a label bearing a flower and buds of similar colour and the words "Chop Bunga Trayay."

In addition to various defences on the merits the Defendants plead estoppel. I will deal with this defence first. It was based upon a visit of Monsieur Perrochet one of the Plaintiffs' directors to Defendants' Head Office in Copenhagen at which he is alleged to have asked for two alterations in the label which the Defendants afterwards made. The Defendants call no evidence on this point. They relied upon the correspondence which in my view entirely fails to support this defence. The affidavit of Monsieur Perrochet conclusively disposes of it. On the merits the Defendants argued that the Plaintiffs had failed to establish that they were entitled to the exclusive right to the name "Chop Bunga" in connection with their milk; that it was known in the market as Chop Bunga Merah (Red Flower Brand) and not Chop Bunga; that the word "Flower" is *publici juris* and that no one can acquire a monopoly in the use of such a word; and that by reason of the differences in the get up of the labels there had not been and would not be any confusion between the two brands.

The cardinal principle applicable to this class of cases is laid down by Lord Kingsdown in the *Leather Cloth Company v. American Leather Cloth Company*, 11 H.L.C. 538.

"The fundamental rule is that one man has no right to put off his goods for sale as the goods of a rival trader and he cannot therefore be allowed to use names marks or other indicia by which he may induce purchasers to believe that the goods which he is selling are the manufacture of another person. This pronouncement was quoted with approval by Lord Herschell in *Reddaway v. Banham* (1896) A.C. at page 209."

This principle is more fully developed by Lord Cranworth in the case of *Seixo v. Provezende*, L.R. 1 Chancery Appeal Cases at page 196—

"What degree or resemblance is necessary from the nature of things, is a matter incapable of definition *a priori*. All that courts of justice can do is to say that no trader can adopt a trade mark so resembling that of a rival, as that ordinary purchasers, purchasing with ordinary caution, are likely to be misled. It would be a mistake, however, to suppose that

the resemblance must be such as would deceive persons who should see the two marks placed side by side. The rule so restricted would be of no practical use. If a purchaser looking at the article offered to him would naturally be led, from the mark impressed on it, to suppose it to be the production of the rival manufacturer, and would purchase it in that belief, the Court considers the use of such a mark to be fraudulent. But I go further. I do not consider the actual physical resemblance of the two marks to be the sole question for consideration. If the goods of a manufacturer have, from the mark or device he has used, become known in the market by a particular name, I think that the adoption by a rival trader of any mark which will cause his goods to bear the same name in the market, may be as much a violation of the rights of that rival as the actual copy of his device."

The first thing which the Plaintiffs have to prove is that their milk has become widely known in the market by the name Chop Bunga. I find as a fact that such is the case. The evidence on this point is, in my opinion, conclusive.

Mr. Wilson produced four invoices ordering Flower Brand upon which the Plaintiffs supplied Rose Brand. A trade rival Mr. Semple of Singapore Cold Storage stated that "The generally recognized name of Rose Brand in the market is Chop Bunga and the Chinese name Whay Piau."

The dealer Lim Teck Kim and the coffee-shop proprietor Tan Seng Kee say the same thing and one of the Defendants' witnesses Lim Pang Gan states that he has heard Rose Brand milk called Chop Bunga. I have no doubt on the evidence that this milk had acquired the name of Chop Bunga or Flower brand which may be described as a fancy name and that no other sweetened milk was known by that name.

The next point which the Plaintiffs have to establish is probability of deception. The evidence on this point may be classified under three heads:

1. Similarity of get up.
2. Probability that Defendants' milk will also become known as or be referred to as Chop Bunga.

3. Definite instances of actual confusion.

As regards the first the Plaintiffs whilst admitting important differences between the two labels contend that the resemblances are such as to be calculated to lead to Defendant's milk becoming known by the same name as and being supplied to customers as and for Chop Bunga. It has to be borne in mind that the purchasers will generally speaking not have the chance of seeing the

tins side by side and it is in evidence that the majority of coffee-shop keepers cannot read English or Chinese. I have already referred to the resemblances and differences. When the two labels—I am referring to the Plaintiffs' label and label D which was the first which the Defendants put upon the Singapore market—are placed side by side the difference in detail between them are very apparent. "But"—to paraphrase the words of Lord Selborne in *Johnston v. Orr Ewing*, L.R.7 A.C. at page 225, "although the mere appearance of these two labels could not lead anyone to mistake one of them or the other it might easily happen that they might both be taken by Asiatics in Singapore unable to read and understand the English language as equally symbolical of the Plaintiffs' goods. To such persons or at least to many of them, even if they took notice of the differences between the two labels it might probably appear that they were only differences of ornamentation etc. leaving the distinctive and characteristic symbol—a single flower of reddish hue with a bud on each side—substantially unchanged. Such variations might not unreasonably have been supposed to have been made by the Plaintiffs for reasons of their own."

It is important to bear in mind that both the rose and the lotus are comparatively rare flowers in this Colony. The witness Lim Teck Kim who has been in business in Singapore for 28 years stated that he had only once seen a lotus and that was in a private garden. My own experience is similar. I have been in the Colony 11 years and have travelled all over the Peninsula. I can only recollect seeing the lotus once. The coffee-shop keeper Tan Seng Kee had never seen a lotus and did not even know the name. Wong Ah Im manager of another coffee-shop had never seen a rose and did not know what a rose was. When in cross-examination he was shown the labels L 1 (with the Rose on) and E (with the Lotus on) he said "I do not know what flowers these are. I call any flower Flower-Brand."

It is true that one of Defendants' witnesses Hong See Pin stated that "all Chinese know the lotus flower. It is very well known in China" but a substantial proportion of the Chinese in Singapore are Straits-born and have never been to China. The same witness in cross-examination admitted that some of his customers do call Lotus Brand milk "Chop Bunga."

In my view there is overwhelming evidence that the Lotus Brand sold with either label D or label E will come to be known as Chop Bunga and I do not think the addition by the Defendants of the word "Tratay" after Chop Bunga on their labels will prevent this. The word *Tratay* is to many purchasers meaningless. The word *Bunga* is familiar to all and the abbreviation of Chop Bunga *Tratay* to Chop Bunga is natural and inevitable.

Evidence was given of instances of actual confusion which had occurred. The first was that in which Mr. Wilson in January 1932 saw Lotus Brand milk for sale at a shop and on being told that it was Chop Bunga gave his clerk Ho Hok Kee a piece of paper on which was written "Chop Bunga Brand Condensed Milk 1 case" and instructed him to get a case of Chop Bunga milk. The clerk sent a friend Wee Ah Wah to the shop with this piece of paper and this friend was supplied with a case of Lotus Brand with label D on the tins and a cash memo with the following words in Chinese:

"One case Red Flower Milk \$10."

Strenuous efforts were made to discredit these witnesses and it was contended that their story was a most improbable one, the suggestion being that it had been invented for the purposes of this action. I believed these witnesses who gave their evidence in a simple straightforward manner. It was perfectly natural that the Plaintiffs' clerk should get a friend wholly unconnected with the Plaintiff firm to make the actual purchase. It was further argued that by giving the clerk only \$10 Mr. Wilson made it impossible for him to buy Rose Brand as the price of the latter at that time was more than \$10 per case but I can see no substance in this point as Mr. Wilson on his earlier visit to the shop had ascertained that what was being sold as Chop Bunga was Lotus Brand which could be bought for \$10.

The second piece of evidence as to actual confusion was that of Mr. Hart an Assistant in the Plaintiff's Singapore office. On 14th March 1932 he asked at a shop for a dozen Chop Bunga milk and was immediately given Lotus brand, although he could see Rose Brand was also displayed for sale. On the same day he asked for one dozen Chop Bunga milk at another shop and the shop-assistant pointed to tins of Rose Brand and Lotus Brand and asked which Chop Bunga was wanted.

The third instance of actual confusion was that of the coffee-shop keepers Tan Seng Kee and Wong Ah Im both of whom in April or May this year bought cases of Lotus Brand from a salesman who visited their shops and sold it to them as Flower Brand—Chop Bunga. In both cases the tins bore the label Exhibit E. Wong Ah Im stated that he knew that the original Chop Bunga (Rose Brand) was the Plaintiffs' milk and he thought the new Chop Bunga (Lotus Brand) was also theirs though he did not know it as a fact. I saw no reason to disbelieve these witnesses and I accepted their evidence.

The Plaintiffs have thus proved actual confusion and deception and the following passage from Lord Blackburn's judgment in the *Orr Ewing* case at page 229 seems peculiarly apposite.

"If the plaintiffs had proved that purchasers had actually been deceived by the use of

the mark B and that the defendants after being told of this had persisted in using this mark B, the plaintiffs would surely have been entitled to an injunction to prevent the continued use of B; and it could be no answer that the purchasers, so deceived, were incautious; the loss to the plaintiffs of the custom of an incautious purchaser is as great a damage as the loss of that of a cautious one."

Even apart from this evidence I should have held that the defendants' labels bear such a resemblance to that of the Plaintiffs as to be calculated to mislead incautious purchasers. There is overwhelming evidence that the Plaintiffs' milk had come to be known in this market as "Flower Brand" milk or its equivalent in local languages which is, to paraphrase Lord Blackburn's remarks about the "two elephants" in the *Orr Ewing* case, important as evidence that the flower was in the minds of the purchasers the characteristic feature or at least a very characteristic feature of the Plaintiffs' mark.

In view of my findings that the Plaintiffs have established their right to the name Chop Bunga and that there is a probability of deception, it is not necessary for the Plaintiffs to prove intention but as this question has been raised in the pleadings I will deal with it shortly.

The evidence bearing upon this point is firstly that of Mr. Petersen the manager of Defendants' Import Department in Singapore. He gave his evidence very frankly and fairly. He stated that the labels were printed in Copenhagen; that it is the practice for the Singapore office to send home sample tins with labels of all competing brands and to report how such other brands are succeeding on the market in Singapore. That is precisely the practice which one would expect to obtain in a large and successful business such as that of the Defendants. He could not say what takes place at the Head Office in Copenhagen but it is reasonable to suppose that they would keep such samples and would examine them when preparing to introduce a new sweetened milk of their own into this market.

The next evidence is that to be extracted from the labels themselves.

It is difficult to believe that the adoption by the Defendants of a single reddish flower with two buds in exactly the same position as those on the Plaintiffs' label can be the result of pure coincidence, especially when one bears in mind the fact that the Defendants had a sample of the Plaintiffs' label in their possession when they designed their own.

Further as Lord Blackburn pointed out in the concluding passage of his judgment in the *Orr*

*Ewing* case page 230 the Defendants' conduct may be evidence against them. He concludes:

"But as against these defendants their own conduct is evidence; and I think their own conduct is such as to prove against them that the resemblance was calculated to deceive. The defendants were quite aware of what was the plaintiffs' trade-mark and what was the view of it taken by the Eastern buyers. They were sending out yarns which they had never dealt in before, for the express purpose of competing with the plaintiffs, and that they had a perfect right to do; and they had a right to try to persuade the native buyers that their goods which were cheaper than the plaintiffs' were as good or better than the plaintiffs'; but they had no right to do anything which might lead buyers to think their goods were the plaintiffs' so as to get the benefit of the plaintiffs' reputation. Why then did they come so near the plaintiffs' ticket? Why use two elephants at all, unless in the hope that incautious purchasers might mistake one ticket for the other? The defendants were both called as witnesses and had every opportunity given to them to explain this and neither could give any answer. Their counsel argued that the plaintiffs had no monopoly of elephants, and that their clients had a right to use them. So they had, unless they used them so as to mislead or at least be likely to mislead purchasers as to whose the goods were. And they complained that to use this as evidence of an intention to mislead, and what I think is more the true question, as evidence of what the effect of the similarity was likely to be, was to rely on topics of prejudice; and that the differences between the two tickets were so great that the defendants could not intend to mislead. I think that the differences were so great that the defendants hoped that no Court would say that the use of the elephants could mislead. In that they have been mistaken. I certainly think that as against these defendants this is very strong evidence."

In the present case I would ask why did the Defendants come so near the Plaintiffs' label? Why being—as I am confident they must have been—familiar with the Plaintiffs' label, did they use a reddish flower at all? Why add the two buds? Why when the Plaintiffs courteously drew their attention to the danger of confusion did they not do as the Cold Storage Company and the American Company had done abandon the use of a flower, at least a flower of this colour,

altogether? Instead of that they make first one small alteration and then another leaving the main feature unchanged. I am forced to the conclusion that some over zealous employee of the Defendants in Denmark took the Plaintiffs' label as his basis and hoped the differences introduced were so great that no Court would say that the use of the flower and the buds could mislead.

It only remains to deal with some points raised by the Defendants.

Mr. Page made a strong point of the alleged fact that the lotus is a very well known flower in Singapore. On the evidence I am satisfied that whilst it may be well known to educated Chinese and in China it is very little known among illiterate Asiatics in Malaya. He contended that no one can have the exclusive right to a common term such as flower and relied upon the decisions in *Boord v. Bagots Hutton* (1916) A.C. 382. *In re Dexter*, (1893) 2 Ch. 262. It seems to me that those cases are clearly distinguishable from the present one. In both of them evidence was called which established that the mark in question in the one case a cat and in the other a star were common to the particular trade. No such evidence was called in the present case. Furthermore those were both cases of applications to register a trade mark and as Lord Haldane pointed out in *Boord's* case (at page 396) the difference in character ought always to be borne in mind between the question in a case where a man is trying to deceive by passing off his goods as those of another and the question of interference with proprietary right which is what the registrar has in the first instance to consider in deciding whether registration ought to be allowed of a trade work bearing some resemblance to another. He went on to say:

"If this difference in the questions is attended to, I think that it will be found that the authorities cited at the Bar on this appeal can, in the main, be classified and reconciled. It is for the most part where the difference has been forgotten that obscurity in expression has arisen."

Finally it was argued that supposing it were held that there was a probability of deception by the use of the label D with the buds on but no such probability by the use of label E with the buds removed, there was no necessity for the Plaintiffs to bring this action as the use of label D was being discontinued and the damages occasioned by its use are very small. I am unable to agree with this view. At the date of issue of the writ 6th January 1932 label D was still being sold on the Singapore market and the Plaintiffs had no means of knowing how many such tins were being sold.

In my view the Plaintiffs are entitled to an injunction in respect of both labels D and E and the consequential relief asked for.

*Judgment accordingly.*

Solicitors for the Plaintiffs—

*Donaldson & Burkinshaw.*

Solicitors for the Defendants—*Allen & Gledhill.*

#### [APPELLATE CRIMINAL JURISDICTION.]

REX .. .. . Respondent  
vs.

TAY THYE JOO .. .. . Appellant  
[SINGAPORE MAGISTRATE'S APPEAL No. 38 OF 1932]

*Criminal law—joinder of charges—charges of cheating and alternative charges of abetment whether rightly joined—S. 172 Criminal Procedure Code.*

When a person is charged in three separate charges with offences of the same kind committed within the space of twelve months he may be charged in the alternative with abetment of the three offences.

APPEAL from the conviction by the Criminal District Judge on 3 charges of cheating offences punishable under section 420 of the Penal Code. Charges of abetment of these offences were also added to the principal charges. One of the issues raised in the appeal was whether there was a proper joinder of charges.

*W. A. N. Battenberg* (Knowles and *H. R. Wilson* with him) for Appellant.

There has been misjoinder in that six offences have been charged. An offence and abetment of that offence cannot be tried together as these are distinct and different kinds of offence. Cr. P.C. Section 169.

Section 172 only applies when it is doubtful what offence the facts prove, not when it is doubtful what facts can be proved. To prove abetment one must prove not only the offence committed but also instigation and so one must go outside the facts of the offence abetted. *Sohoni* 1927 Edition p. 586. *R. v. Dass* I.L.R. 51 All. 544.

*McElwaine*, D.P.P. for the Crown.

*Emp. v. Thibhovandas* I.L.R. 33 Bom. 77 at 86 and *In re Gangadhar Tilok* I.L.R. 33 Bom. 221 at 237-8 are preferable to *R. v. Dass* (*supra*) and decide that the exceptions mentioned in Section 169 Cr. P.C. are cumulative. An offence and its abetment must in the nature of things be "in the same transaction." Section 171. There are not six distinct offences charged. Only three offences are alleged and these are of the same kind, and on the same facts alternative not additional, charges are laid.